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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 371/39/B/WZ/2020-RA/240 : Date of Issue : 09.12.2022

ORDER NO. 361 /2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 08.12.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS
ACT, 1962.

(i). F.No. 371/39/B/WZ/2020-RA

Applicant : Shri. Naresh Prabhudas Soni

Respondent : Pr. Commissioner of Customs, Custom House,
Near Akashwani, Navrangpura, Ahmedabad 380 009.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. AHD-
CUSTM-000-APP-463-19-20 dated 04.12.2019 issued
through F.No. S/49-68/CUS/AHD/19-20 passed by the
Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by Shri. Naresh Prabhudas Soni (hereinafter referred to as the Applicant) against the Order-in-Appeal No. AHD-CUSTOM-000-APP-463-19-20 dated 04.12.2019 issued through F.No. S/49-68/CUS/AHD/19-20 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Brief facts of the case are that the applicant was intercepted by Customs Officers on 18.05.2018 at SVP International Airport, Ahmedabad, having earlier arrived from Dubai onboard Fly Dubai Flight No. FZ-437. The applicant had been intercepted at the exit gate having crossed the green channel. To query whether he had anything to valuable to declare, the applicant had replied in the negative. The applicant was asked to pass through the door frame metal detector (DFMD) which indicated presence of some metallic substance on his person. At this, the applicant removed a gold chain worn round his neck and one kada worn on his right hand. Both these items were hidden under his shirt. The said gold chain and kada were of 999.0 purity, together weighing 463.760 gms, valued at Rs. 13,53,078/-(T.V) and Rs. 14,84,263/- (M.V).

3. The Original Adjudicating Authority (OAA), viz, Addl. Commissioner, Customs, Ahmedabad vide Order-In-Original No. 27/ADC-MLM/SVPIA/O&A/2018 DATED 26.02.2019 issued on 08.03.2019 through F.No. VIII/10-94/SVPIA/O&A/2018 ordered for the absolute confiscation of the gold chain and kada having purity of 999.0, totally weighing 463.760 grams, valued at Rs. 13,53,078/-(T.V) and Rs. 14,84,263/- (M.V) under Sections 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962 and a penalty of Rs. 2,00,000/-- under Section 112 (a) & (b) of the Customs Act, 1962 was imposed on the applicant.

4. Aggrieved by the said order, the applicant preferred an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Ahmedabad, vide Order-In-Appeal No. Order-in-Appeal No. AHD-CUSTOM-000-APP-463-19-20 dated 04.12.2019 issued through F.No. S/49-68/CUS/AHD/19-20 did not find any reason to interfere in the Order-in-Original passed by the OAA and upheld the same.

5. Aggrieved with the above order of the appellate authority, the Applicant has filed this revision application on the following grounds;

- 5.01. that the orders of the lower authorities were patently erroneous and were based on assumptions and presumptions and incorrect appreciation of law.
- 5.02. that he had declared the gold in his possession and disembarkation cards / declaration forms were not available with the airline as they had discontinued the same and the Customs had not kept the forms at prominent location; that an oral declaration was also a declaration under Section 77 of the Customs Act, 1962; that they rely on the case of Naresh Lokumal Serai vs. Commr. Of Customs, (Export), Raigad reported in 2006-203-ELT-580-Tri-Mumbai wherein it was held that absence declaration of value in the BDF cannot be a ground for imposing a penalty and confiscating the goods.
- 5.03. that Section 125 of the Customs Act, 1962 clearly lays down that where the goods are not prohibited, the goods may be released on redemption fine; that adjudicating / appellate authority had the discretion to release the goods on payment of redemption fine; that they rely on the case of Commr. Of Customs (Air) vs. P. Sinnasamy in CMA No. 1638 of 2008 passed by the Madras High Court. the corroborative facts had not been mentioned by the OAA.
- 5.04. that the lower authorities had arrived at erroneous conclusions and had failed to exercise the discretion as per the canons laid down in said judgement of P.Sinnasamy.
- 5.05. that the applicant relies on the following case laws where redemption had been granted,

- (a). Yakub Ibrahim Yusuf Vs CC, Mumbai 2011 (263) ELT 685 (Tri - Mumbai),
- (b). Shaik Jamal Basha V. Government of India (1997(91) E.L.T. 277 (A.P.)
- (c). T.Elavarasan vs The Commissioner of Customs 2011-266-ELT-167-Mad.
- (d). Union of India v. Dhanak M. Ramji - 2010 (252) E.L.T. A102 (S.C.)

5.06. that no penalty had been committed and the penalty imposed was high and not commensurate with the misdemeanor.

Under the above facts and circumstances of the case, the Applicant has prayed that the Revision Authority be pleased to hand over the goods on payment of duty or allow to re-export the goods and drop the penalty or reduce it to reasonable level or pass any such order as deemed fit.

6. Personal hearing through the online video conferencing mode was scheduled for 23.08.2022. Shri. Rishikesh Mehra, Advocate appeared for personal hearing on 23.08.2022 and submitted that gold is not in commercial quantity, there was no concealment and gold is not prohibited item. He requested for taking lenient view in the matter.

8. The Government has gone through the facts of the case and notes that the applicant had failed to declare the goods in his possession as required under Section 77 of the Customs Act, 1962. The applicant had not disclosed that he was carrying dutiable goods and had he not been intercepted would have walked away with the impugned crude raw chain and kada without declaring the same to Customs. By his actions, it was clear that the applicant had no intention to declare the impugned gold to Customs and pay Customs duty on it. The Government finds that the confiscation of the gold chain and kada were therefore, justified.

9. The Hon'ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.L.T.

1154 (Mad.), relying on the judgment of the Apex Court in the case of Om Prakash Bhatia v. Commissioner of Customs, Delhi reported in 2003 (155) E.L.T. 423 (S.C.), has held that “ *if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods.*” It is thus clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition, “prohibited goods”.

10. Further, in para 47 of the said case the Hon'ble High Court has observed “*Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation.....*”. Thus, failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold “prohibited” and therefore liable for confiscation and the ‘Applicant’ thus, liable for penalty.

11. Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. Hon'ble Supreme Court in the case of M/s. Raj Grow Impex [*CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated*

17.06.2021] has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.

71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.

12. The quantity of gold jewellery under import is small and is not of commercial quantity. The gold jewellery had been worn by the applicant under the shirt. There are no allegations that the applicant is a habitual offender and was involved in similar offence earlier. The facts of the case indicate that it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. Under the circumstances, the seriousness of the misdemeanour is required to be kept in mind when using discretion under Section 125 of the Customs Act, 1962 and while imposing quantum of penalty.

13. The absolute confiscation of the gold, leading to dispossession of the applicant of the gold in the instant case is therefore, harsh and not reasonable. Government therefore, sets aside the impugned order of the

appellate authority. The impugned gold chain and kada, totally weighing 463.760 grams, valued at Rs. 13,53,078/-(T.V) and Rs. 14,84,263/- (M.V) are allowed redemption on payment of fine of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only). The Government finds that the penalty of Rs. 2,00,000/- imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 is commensurate with the omission and commission committed and the same is sustained.

14. Revision Application is disposed of on the above terms.

Shrawan
8/12/22

(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER NO. 361 /2022-CUS (WZ)/ASRA/MUMBAI DATED 08.12.2022.

To,

1. Shri. Naresh Prabhudas Soni, 13/149, Abhilasha Apartment, Behind Vyaswadi, New Vadaj, Ahmedabad – 380 013.
2. Pr. Commissioner of Customs, Custom House, Near Akashwani, Navrangpura, Ahmedabad 380 009.

Copy to:

1. Shri. Naresh Prabhudas Soni, C/o. Rishikesh Mehra, B/1103, Dev Vihaan, Behind Third Eye Residency, Opp. Motera Stadium, Sabarmati, Ahmedabad – 380 005.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.